

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "F", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

**ITA No. 198/MUM/2021
Assessment Year: 2011-12**

Asstt. Commissioner of Income Tax, Circle-15(1)(1), Room No. 451, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s Fugro Survey India Pvt. Ltd., Plot No. D-222/30, Fugro House, TTC Industrial Area, MIDC Nerul, Navi Mumbai - 400706 PAN: AAACF5243R
(Appellant)		(Respondent)

Revenue by : C T Mathew (DR)

Assessee by : Shalin Divatia (AR)

Date of Hearing : 03/11/2021
Date of Pronouncement: 23/11/2021

ORDER

PER SAKTIJIT DEY, JM

This is an appeal by the revenue against order dated 27.02.2020 of learned Commissioner of Income Tax (Appeals)-24, Mumbai, for the assessment year 2011-12.

2. The dispute in the present appeal is confined to deletion of disallowance of Rs. 2,55,97,771/- made on account of bad debt written off.

3. Briefly the facts are, the assessee is a resident company providing offshore and onshore survey and navigation services. For the assessment year under dispute, assessee filed its return of income on 29.11.2011 declaring total income of Rs. 2,86,25,034/-. In course of assessment proceedings, the

assessing officer (AO) noticed that assessee has claimed deduction of an amount of Rs. 2,55,97,771/- towards bad debt written off. Noticing this, the AO called upon the assessee to furnish the details and justify the claim. In response to the query raised, assessee furnished its reply with supporting evidence and justified its claim of deduction. The Assessing Officer, however, was not convinced with the submissions of the assessee. He observed, the assessee did not make sufficient efforts to recover the outstanding dues. Accordingly, he disallowed assessee's claim and added back to the income of the assessee by invoking the provision of section 69C of the Act. Assessee contested the aforesaid addition before learned Commissioner (Appeals). Learned Commissioner (Appeals) being convinced with the submissions of the assessee deleted the addition with the following observations:-

“5.2 It is seen that M/s.Naftogaz India Pvt. Ltd., a New Delhi based company was awarded a contract by ONGC and in turn sub-contracted the work relating to Geo physical Survey, Positioning support for Diving, etc. to the appellant vide various Work orders. Copies of these Work Orders have been submitted in the paper book. It is also observed that during the period 28.04.2008 to 30.04.2010, the appellant raised various invoices on M/s.Naftogaz India Pvt. Ltd. As per its own submission, invoices were raised to the extent of Rs.7,62,18,000/-, out of which Rs.4,39,00,651/were received by the assessee from time to time after deduction of TDS of Rs.40,98,366/-. Subsequently, M/s. ONGC Ltd. cancelled the contract of M/s. Naftogaz India P Lt. At that point of time, a sum of Rs.2,55,97,771/was due to the appellant from M/s.Naftogaz India Pvt. Ltd. (after deducting service tax of Rs.26,21,212/-). The appellant company submits that it made various efforts to get the amount due to it, however, was unsuccessful. Thereafter, it also issued a legal notice to M/s.Naftogaz India Pvt. Ltd., a copy of which has also been placed in the paper book. It is seen that this letter is an ultimatum to the creditor to pay the sum along with interest within a period of 21 days failing which the appellant would have to file a winding-up petition against the

creditor and seek the appointment of an official liquidator for liquidating the company. However, the appellant did not follow up on this and has explained this inactivity on account of the fact that it realised that the liabilities of M/s.Naftogaz India Pvt. Ltd. were far in excess of its assets and there were a number of secured creditors who had already filed cases against M/s.Naftogaz India Pvt. Ltd. Therefore, since the appellant was an unsecured creditor, it found that its chances of recovering anything were remote. In the circumstances, it decided to write off the amounts not received as bad debt.

5.3. The Assessing Officer has contended that the amount was not a bad debt because the appellant did not take adequate measures to recover the same which were still available to it. In this context, it is observed that the Assessing Officer has neither questioned the “authenticity of the Invoices raised or the debt that is outstanding in the name of the appellant. It has also not been contended that the income represented by these debts have not been offered to tax. Considering the same, it is observed that after 01.04.1989, it is not necessary for the appellant to establish that the debt had in fact become irrecoverable. It is enough If the bad debt is written off as irrecoverable in the accounts of the appellant. In the present case, there is no doubt that the debt has been written off in the accounts of the appellant. The Hon’ble Supreme Court in the case of CIT v. TRF Ltd. (2010) 323 ITR 397 (SC) has pointed out that after the amendment of section 36(1)(vii) of the Income-tax Act, 1961, there is no necessity for the assessee to establish that a debt has become irrecoverable and it is enough if the debt is written off as irrecoverable in the accounts of the assessee. Examination of the Schedule 18 to the financial statement of the assessee’s accounts reveal that the bad debt has been written off in the accounts of the appellant. The appellant has also cited the judgment of Jurisdictional High Court in the case of CIT Vs Star Chemicals Bombay Pvt. Ltd. 313 (ITR 126 (Bom) which basically reiterates the position taken by the Hon’ble Supreme Court in the case of CIT v. TRF Ltd. (supra).”

4. We have considered rival submissions and perused the materials on record. A reading of the assessment order would revealed that the AO has not disputed the fact that the amount of Rs. 2,55,97,771/- towards bad debts

written off. The reasons shown by the assessee for writing off the amount has not been disputed by the AO. The AO has also recorded that the assessee had issued legal notice to the person concerned for recovery of the amount. The only reason for which the AO has disallowed assessee's claim is, according to the AO, the assessee has not made sufficient efforts to recover the outstanding dues. In our view, the aforesaid reasoning of the AO is unsustainable. As could be seen from the facts on record, assessee was a sub-contractor under M/s Naftogaz India Pvt. Ltd., who was awarded a contract by ONGC. The assessee was assigned the specific work of physical survey, positioning support for diving etc. Subsequently, ONGC cancelled the contract with M/s Naftogaz India Pvt. Ltd. As a result of which the amount of Rs. 2,55,97,771/- due to be received by the assessee from M/s Naftogaz India Pvt. Ltd. could not be recovered. Further, the reasoning of the AO that the assessee has not made sufficient effort to recover the outstanding due is contrary to the materials on record, considering the fact that the assessee has issued legal notice for recovery of the dues. In any case of the matter, after the amendment to section 36(1)(vii) w.e.f. 01.04.1989, it is not necessary for the assessee to prove that the amount has become irrecoverable despite best efforts. The only requirement is, the amount must have been written off having become irrecoverable. This is the view expressed by the Hon'ble Supreme Court in case of TRF Ltd. vs. CIT [2010] 83 ITR 397.

5. In view of the aforesaid, we concur with the view expressed by learned Commissioner (Appeals) on the issue. Grounds are dismissed.

6. In the result, appeal is dismissed.

Order pronounced in the open court on 23rd November, 2021.

Sd/-

(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 23/11/2021

Alindra, PS

आदेश प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai